

**TERMS AND CONDITIONS OF
PURCHASE ORDER / SERVICE AUTHORIZATION
CITY OF GLENDALE**

These Terms and Conditions are part of the Purchase Order / Service Authorization, a government contract. Any words that Vendor adds or any form that Vendor uses in the course of business will not change or supersede the terms of the Purchase Order / Service Authorization. The City must agree, in writing, to any change in terms. The City's acceptance of any work or services and/or of any item, article, product, goods, material, machinery, tool, equipment (referred to below as "item" or "items") is not an acceptance of Vendor's other terms.

1. Vendor agrees to provide all the items and/or perform all the work or services described in the Purchase Order / Service Authorization, subject to: all the terms and conditions of the Purchase Order / Service Authorization, these Terms and Conditions of the Purchase Order / Service Authorization, and all other accompanying documents or attachments.
2. Vendor shall not make any substitution of any item ordered, shall not make any change in the nature, extent or scope of the work or services specified, and shall not perform any additional work or services, without Vendor's first obtaining the City's prior written approval. If Vendor is unable to fulfill or perform the Purchase Order / Service Authorization exactly as written, Vendor agrees not to fulfill or perform the Purchase Order / Service Authorization without prior approval of the Purchasing Administrator or an authorized representative. Any additional work or services that Vendor provides without written authorization from the City shall be done at Vendor's risk and without payment.
3. Vendor acknowledges that it has in its possession all applicable plans, specifications, descriptions, drawings, data, and all other documents to which reference is made in the Purchase Order / Service Authorization and in all other accompanying documents or attachments. Vendor further acknowledges that the plans, specifications, descriptions, drawings, data, and other documents are adequate to enable Vendor to determine fairly its ability to procure the items ordered, and/or to perform the work or services specified, in the Purchase Order / Service Authorization, at the price and in accordance with the specified delivery date(s) and/or performance schedule(s) set forth. Vendor represents and warrants that it now has, or it can readily procure without the City's assistance, all the items, facilities, and/or labor necessary for performing the Purchase Order / Service Authorization.
4. Except as may be necessary for Vendor to fulfill or perform the Purchase Order / Service Authorization or except as the City may authorize in writing, Vendor shall not disclose, publish, or authorize others to disclose or publish, any plans, specifications, descriptions, drawings, data, schedules, reports or other information that Vendor received from the City. Ownership of all plans, specifications, descriptions, drawings, data, schedules, reports or other information shall remain with the City. Upon the City's request, Vendor shall return all plans, specifications, descriptions, drawings, data, schedules, reports or other information to the City.
5. Upon written notice to Vendor, the City shall have the right to change, including, but not limited to: the extent of the work or services; the quantity of items; the plans, specifications, descriptions, drawings, data, schedules; the time, method, place of delivery; the method of shipment or packaging. Upon receipt of the City's notice of change(s), Vendor shall proceed promptly to make the change(s) in accordance with the notice's terms. If any change causes an increase or decrease in the cost of performance, or in the time required for performance, the City and Vendor promptly shall negotiate an equitable cost adjustment and upon the parties' reaching an agreement, the City shall modify the Purchase Order / Service Authorization in writing accordingly. However, as promptly as possible, but in any event within thirty (30) days after receipt of the City's notice of change(s), Vendor shall deliver to the City an initial written statement showing the effect of any change in the price(s) and in the delivery or performance date(s). Within thirty (30) days from the date of that initial statement, Vendor shall supplement the initial statement by delivering to the City a detailed, written specification of the amount of the price adjustment and supporting cost figures. Vendor's failure to submit the statements within the time limits stated above shall constitute Vendor's consent to perform the change(s) without increase in price, without claim for material rendered obsolete, and without change in delivery.
6. Except as otherwise noted in the Purchase Order / Service Authorization or in any other accompanying document or attachment, Vendor shall deliver all items ordered in a new and unused condition.
7. All shipments must be accompanied by Vendor's packing slip, and the Purchase Order / Service Authorization number must be shown on each package. Vendor's packing slip shall list the prices of all items ordered.
8. Within two (2) days after each shipment, Vendor shall submit all invoices in duplicate to the "invoice to" address shown on the face of each Purchase Order / Service Authorization. Vendor shall send all other correspondence and advertising material to the address and the attention of the Purchasing Administrator.
9. Vendor shall ship all items F.O.B. destination unless otherwise noted on the Purchase Order / Service Authorization. All transportation charges must be prepaid and separately itemized.
10. Title to the item shall vest in the City only upon: delivery of the item(s) ordered; delivery in accordance with the terms, conditions, and specifications set forth in the Purchase Order / Service Authorization and/or all other accompanying documents or attachments; and delivery at the designated F.O.B. point.

11. Cash discounts shall be taken as offered. The discount period shall be computed from date of receipt of the invoice, item, or services, whichever is later.
12. Vendor shall itemize separately applicable sales or use tax and shall deduct all Federal taxes from all charges. Under excise tax regulations 48.4221-5, 48.4222(a)-1, 48.4222(b)-1 and IRC Section 4221(a), the City is not required to provide Form 637.
13. All items ordered are subject to acceptance test and inspection. If the City rejects any item or items, Vendor agrees to pay all test and inspection charges, plus packaging and return freight to Vendor's plant.
14. Where applicable, all items ordered shall conform to all the health, safety and occupational laws, orders, rules, regulations, bulletins, and directives by federal, state, county, City, and other governmental or regulatory bodies or authorities.
15. Vendor shall keep all items free and clear of all liens and encumbrances.
16. Vendor acknowledges that Vendor is aware of the provisions of Labor Code Section 3700 which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code. Vendor affirms that it will comply with the Labor Code provisions before starting or performing any work of the Purchase Order / Service Authorization. Vendor represents and warrants that it has a certificate of consent to self-insure, or a certificate of workers' compensation insurance, and Vendor shall deliver it to the Purchasing Administrator before commencing or performing the Purchase Order / Service Authorization. All workers' compensation insurance policies shall provide that the insurance carrier will notify the City at least thirty (30) days in advance of the policy's expiration, termination, cancellation, or non-renewal. If the insurance policy expires, terminates, cancels, non-renews, or lapses at any time before completion of the work or services, or if Vendor's certificate of consent to self-insure is revoked at any time before completion of the work or services, (a) Vendor shall notify immediately the Purchasing Administrator of the expiration, termination, cancellation, revocation, non-renewal, or lapse of insurance or self-insurance, and (b) Vendor shall immediately cease all work until Vendor obtains workers' compensation insurance coverage. Any time lost during any lapse in insurance or self-insurance shall not entitle Vendor to any extension of time to perform or fulfill its obligations under the Purchase Order / Service Authorization.
17. Vendor understands and agrees that in its performing any work or services under the Purchase Order / Service Authorization, Vendor is, and shall be, an independent contractor. Vendor is not an agent or employee of the City. Vendor shall provide the required work or services in its own manner and method, except as the Purchase Order / Service Authorization requires. Further, Vendor has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons that Vendor employs in performing the work or services under the Purchase Order / Service Authorization. Vendor shall be solely responsible for, and shall indemnify, defend and hold harmless the City, its officers, agents, employees and representatives from all matters relating to the payment of Vendor's employees, including, but not limited to: compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, entitlements, and regulations of any nature whatsoever. Vendor acknowledges that Vendor and its subcontractors, agents, employees, and anyone it directly or indirectly employs shall not be considered employees of the City under any circumstances, and shall not be entitled to any benefits or rights afforded to the employees of the City, including, but not limited to: sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long or short term disability, or workers' compensation insurance benefits.
18. Before issuing the Purchase Order / Service Authorization, the Purchasing Administrator may have required Vendor to provide evidence of liability or other insurance, and/or to comply with the City's insurance requirements. If insurance is required, the coverage(s), the amount(s), and the requirements are set forth in the handouts and forms provided by the Purchasing Administrator. The City Attorney's office must review all insurance forms for compliance with the Purchase Order's / Service Authorization's terms, and/or other City insurance requirements. Vendor's failure to obtain and maintain the required insurance coverages and amounts throughout the term that the Purchase Order / Service Authorization is in force shall constitute a material breach of the Purchase Order / Service Authorization which the City may suspend or terminate at its option and sole discretion.
19. Vendor shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Vendor's performance of the Purchase Order / Service Authorization, by its subcontractor, or by anyone it directly or indirectly employed, and whether such damage or injury shall accrue or be discovered before or after termination of the Purchase Order / Service Authorization. Vendor agrees to release, indemnify, defend and hold harmless, to the maximum extent permitted by law, the City, its officers, agents, employees, and representatives, from and against any and all liability, suits, actions, proceedings, claims, judgments, liens, losses, damages, injuries (even if the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, and appeal expenses) which in whole or in part arise out of or are caused by, or which are alleged to have arisen out of or to have been caused by: (a) the use or operation, including the malfunctioning of, any item ordered under the Purchase Order / Service Authorization; and/or (b) any acts, errors or omissions (including, without limitation, professional negligence) of Vendor, its officers, agents, employees, representatives, contractors or subcontractors, or by anyone it directly or indirectly employed, in connection with the performance of the Purchase Order / Service Authorization. Vendor's obligation to indemnify, defend, and hold harmless includes, but is not limited to: personal injury, accidental death and property damage (including, but without limitation, contract, tort, patent, copyright, trade secret, or trademark infringement) sustained by any person or persons (including, but not limited to: individuals, partnerships, corporations, firms, trusts, associations, organizations, other legal entities, Vendor and its officers, agents, employees, and members of the general public).

20. During the term that the Purchase Order / Service Authorization is in force, Vendor and its employees shall: (a) obtain and maintain valid permits, licenses, certificates, authorizations and other documents as required by federal, state, county, City and other governmental or regulatory bodies to legally procure the items ordered and/or to perform the work or services specified in the Purchase Order / Service Authorization; and (b) comply with all applicable federal, state and local laws, rules, regulations, and orders.
21. In addition to all warranties implied by law, Vendor warrants that all the items ordered will conform to the applicable plans, specifications, descriptions, drawings, data, and samples; will be merchantable; of good workmanship and material; and free from defect. Unless the items are manufactured according to a detailed design provided by the City, Vendor entirely assumes design responsibility, warrants that the items are free from design defect, and warrants that the items are suitable for the purposes intended by the City. Vendor's warranties, together with its service guarantees, shall not be deemed as the exclusive or sole warranty or guarantee for any item ordered. The City's inspection, approval, acceptance, use of, or payment for all or any part of the item ordered shall not affect its warranty rights, regardless of whether a breach of warranty was evident at the time.
22. Vendor shall transfer to the City all of Vendor's rights to and interests in the manufacturer's warranty or guarantee for each item delivered or installed under the Purchase Order / Service Authorization. Where applicable, the City shall be named as the owner - beneficiary in any warranty or guarantee. Vendor shall deliver to the City all the written material comprising the manufacturer's warranty or guarantee. Vendor shall ensure that each warranty or guarantee is in full force and effect from the date the City starts operating or using the item. All manufacturers' warranties or guarantees shall be in addition to Vendor's warranty under the Purchase Order / Service Authorization.
23. Any of the following events shall constitute an event of default ("Event of Default") under the Purchase Order / Service Authorization:
- (a) Vendor refuses or fails to deliver any item ordered;
 - (b) Vendor refuses or fails to perform the work or services specified;
 - (c) Vendor refuses or fails to provide enough properly skilled personnel or proper equipment, supplies, materials, machinery or tools;
 - (d) Vendor refuses or fails to fulfill or perform its obligations under the Purchase Order / Service Authorization within the specified time, or if no time is specified, within a reasonable time;
 - (e) Vendor refuses or fails to make progress so as to endanger performance of the Purchase Order / Service Authorization in accordance with its terms;
 - (f) Vendor delivers an item that does not conform to the Purchase Order / Service Authorization, applicable plans, specifications, descriptions, drawings, data, and/or any other document or attachment to which reference is made in the Purchase Order / Service Authorization;
 - (g) Vendor and/or its employees disregards or violates any federal, state, local or City law, rule, procedure or regulation;
 - (h) Vendor institutes proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation;
 - (i) Vendor refuses or fails to perform or observe any covenant, condition, obligation, or provision of the Purchase Order / Service Authorization;
 - (j) The City discovers that a statement, representation, or warranty by Vendor, relating to the Purchase Order / Service Authorization, is false, misleading, or erroneous in any material respect;
 - (k) For any other justifiable reason at the option and sole discretion of the Purchasing Administrator or authorized City representative.
24. Upon the occurrence of an Event of Default, the City, at its option and sole discretion, may exercise any one or more of the following remedies:
- (a) Upon written notice to Vendor, the City may terminate the Purchase Order / Service Authorization, in whole or in part;
 - (b) Upon written notice to Vendor, the City may extend the time of performance;
 - (c) The City may require Vendor, at its expense, to remove and/or replace the defective or deficient item, work, or services;
 - (d) The City may contract with, or use the services of, any other Vendor, supplier or contractor;
 - (e) The City may keep any item that Vendor has delivered before or after the Purchase Order's / Service Authorization's termination or cancellation. The City shall pay Vendor the fair value of any item delivered;
 - (f) The City may charge Vendor the amount by which the costs--- (1) of fabricating or procuring the canceled item from another source, and/or (2) of obtaining substitute labor, work or services from another source--- exceed the prices specified in the Purchase Order/ Service Authorization;
 - (g) The City may set off any costs, charges, expenses, and/or fees it incurs for fabrication, procurement, or performance of the cancelled item, work or services, against any amounts which may be payable to Vendor under the Purchase Order / Service Authorization, or otherwise;
 - (h) The City may proceed by appropriate court action to enforce the terms of the Purchase Order / Service Authorization, to recover damages for Vendor's breach of the Purchase Order / Service Authorization, or to rescind the Purchase Order / Service Authorization;
 - (i) The City may exercise any other available and lawful right or remedy. Vendor shall be liable for all legal fees plus other costs and expenses that the City incurs upon an Event of Default or in the City's exercise of its remedies under the Purchase Order / Service Authorization.

25. Vendor shall bear all losses, costs, and expenses resulting to Vendor because of: an unforeseen obstruction or difficulty that Vendor may have encountered; the amount, scope, extent, character, and/or nature of the work or services is different than what Vendor assumed; fire; earthquake; casualty; weather; riot; war; epidemic; act of God; or other cause. Vendor shall not be liable to the City for the damages specified in (f) and (g) of paragraph 24 above, arising out of or caused by Vendor's delay in fulfilling or performing its obligations under the Purchase Order / Service Authorization, if the following conditions exist:
- (a) Vendor exercised due diligence in promptly notifying the City of the conditions causing the delay; and
 - (b) Vendor could not obtain from other sources, and not in sufficient time to permit Vendor to meet the required delivery schedule, the item(s), work and/or services that a subcontractor or supplier had agreed in writing to furnish Vendor; and
 - (c) Vendor's delay was due to causes beyond its control, and without its fault or negligence; or
 - (d) Vendor's delay was caused by the default of a subcontractor or supplier; or
 - (e) Vendor's delay arose out of an event beyond the control of both Vendor and the subcontractor or supplier, and without the fault or negligence of either of them.
26. Vendor represents and warrants that no officer or employee of Vendor is currently a council member, officer, or employee of the City, or a member of its boards, commissions, or committees, except to the extent permitted by law. Vendor further represents and warrants that no council member, officer, or employee of City has, or shall have, any direct or indirect financial interest in the Purchase Order / Service Authorization.
27. At all reasonable times, Vendor shall allow the Purchasing Administrator or other City representative access to, and the right to inspect, examine, copy, and audit, Vendor's books, records, and other documents related to the Purchase Order / Service Authorization.
28. Vendor certifies and agrees to not discriminate against any employee or person who is subject to the Purchase Order / Service Authorization because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.
29. Nothing under the Purchase Order / Service Authorization shall be construed to give any rights or benefits to anyone other than the City and Vendor, and all duties and responsibilities under the Purchase Order / Service Authorization shall be for the sole and exclusive benefit of the City and Vendor and not for the benefit of any other party. Vendor shall not assign, sublet, pledge, hypothecate, grant or transfer any rights or interests in the Purchase Order / Service Authorization, and shall not delegate any duty owed, without the written consent of the City. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach of the Purchase Order / Service Authorization which the City may terminate at its option and sole discretion.
30. The City's waiver of any term, provision, condition, covenant, breach, or default of the Purchase Order / Service Authorization shall not constitute a waiver of any other term, provision, condition, covenant, breach, or default, nor of a subsequent breach of the one waived. The City's failure to require exact, full, and complete compliance with any term, provision, condition, or covenant of the Purchase Order / Service Authorization shall not change any term, provision, condition, or covenant of the Purchase Order / Service Authorization and shall not estop the City from fully enforcing any or all of the Purchase Order's / Service Authorization's terms, provisions, conditions, or covenants. The duties and obligations imposed by the Purchase Order / Service Authorization shall be cumulative (rather than alternative) and in addition to (rather than a limitation on) any option, right, power, remedy, or privilege of the City.
31. This Purchase Order / Service Authorization represents the entire and integrated agreement between the City and Vendor. This Purchase Order / Service Authorization supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Any modifications to the terms and conditions of the Purchase Order / Service Authorization shall be effective only when agreed to in writing by the City.
32. Time is of the essence in the performance of all the terms of the Purchase Order / Service Authorization.
33. California's laws shall govern the validity, performance, interpretation, and effect of the Purchase Order / Service Authorization.
34. In case of any conflict between the terms of the Purchase Order / Service Authorization and the terms of any other document or attachment which is a part of the transaction, the terms of the Purchase Order / Service Authorization shall strictly prevail.
35. The invalidity, in whole or in part, of any term of the Purchase Order / Service Authorization shall not affect the remaining terms' validity.
36. The Purchase Order / Service Authorization may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Vendor shall promptly execute and deliver to the City any further documents that are reasonably necessary to carry out the intent and purpose of the Purchase Order / Service Authorization.
37. The Purchase Order / Service Authorization shall not be valid unless it bears the signature of the Purchasing Administrator or an authorized representative.